

FILED

NOT FOR PUBLICATION

AUG 24 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

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MAY 01 2008

UNITED STATES OF AMERICA,

No. 05-36064

CLERK, U.S. DISTRICT COURT
ANCHORAGE, ALASKA

Plaintiff - Appellee,

D.C. No. CV-92-00031-F-RRB

JOHN COLLETTE,

MEMORANDUM*

Claimant - Appellant,

v.

STRUCTURES & LEASEHOLD
INTEREST IN REAL PROPERTY AT
3221 EST,

Defendant.

Appeal from the United States District Court
for the District of Alaska

Ralph R. Beistline, District Judge, Presiding

Argued and Submitted August 10, 2007
Fairbanks, Alaska

Before: WALLACE, NOONAN, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

John Collette appeals the denial of his Fed. R. Civ. P. 60(b) motion for relief from a January 1993 default judgment resulting in the forfeiture of 3221 Ester Dome Road, Fairbanks, Alaska. Collette argues that the judgment is void as to his deceased brother, James Collette, because his brother owned part of a mining claim on the property but did not receive notice of the forfeiture action. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

Rule 60(b) provides that “a party or a party’s legal representative” may seek relief from a “final judgment, order, or proceeding” for several reasons, including that “the judgment is void.” There is no evidence that James Collette ever filed a claim related to the forfeiture of the property at issue. Because James Collette was never a “party” to the forfeiture action, John Collette is not “a party’s legal representative,” even assuming that he is his brother’s legal representative. By Rule 60(b)’s terms, John Collette cannot bring a Rule 60(b) motion on his brother’s behalf to challenge the forfeiture judgment. *See United States v. 5145 N. Golden State Blvd.*, 135 F.3d 1312, 1317 (9th Cir. 1998).

AFFIRMED.

